

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 89880-001

v

Blue Cross Blue Shield of Michigan
Respondent

_____/

**Issued and entered
this 14th day of August 2008
by Ken Ross
Commissioner**

ORDER

I

PROCEDURAL BACKGROUND

On May 19, 2008, XXXXX, on behalf of her minor son XXXXX (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.* The Commissioner reviewed the material submitted and accepted the request on May 28, 2008.

The Commissioner assigned the case to an independent review organization (IRO) because it involved medical issues. The IRO provided its analysis and recommendations to the Commissioner on June 11, 2008.

II

FACTUAL BACKGROUND

The Petitioner receives health care benefits from Blue Cross Blue Shield of Michigan (BCBSM) through XXXXX, an underwritten account. The certificate of coverage is BCBSM's *Community Blue Group Benefit Certificate* (the certificate).

The Petitioner was born in 2004 and has been diagnosed as autistic. He received applied behavior analysis (ABA) treatment at XXXXX Hospital from September 4, 2007 through November 21, 2007. The cost of this care was \$9,193.00.

Payment for the Petitioner's ABA treatment was denied by BCBSM. The Petitioner appealed. After a managerial-level conference, BCBSM did not change its decision and issued a final adverse determination dated April 11, 2008.

III ISSUE

Did BCBSM properly deny coverage for the Petitioner's ABA treatment?

IV ANALYSIS

Petitioner's Argument

The Petitioner's parents sought treatment for their son who has severely impaired developmental function and speech delay. The parents believe that ABA therapy represents the best care for their son's autism spectrum disorder.

Significant objective, documented progress was achieved in the Petitioner's first three months of intensive ABA therapy. The Petitioner is continuing this treatment at home and at school and is receiving BCBSM reimbursement for some services. The Petitioner's parents request that BCBSM be required to pay for the first three months of ABA therapy.

BCBSM's Argument

BCBSM indicated that it did not cover the Petitioner's ABA services because it considered ABA to be a treatment method not sufficiently well established and therefore at the investigational stage. Experimental and investigational services are excluded from coverage (Section 6 of the certificate).

BCBSM defines autism as a developmental disorder of brain function classified as one of the pervasive developmental disorders. These disorders can vary widely in severity and symptoms; classical autism is characterized by impaired social function, problems with verbal and nonverbal

communications and imagination, and unusual or severely limited activities and interests. ABA is considered a behavioral therapy that attempts to reduce disruptive behavior and improve communication skills and social adjustment. BCBSM believes that the medical literature and clinical experience is inconclusive as to whether ABA is safe or effective treatment for any condition.

The certificate provides that a procedure is considered experimental/investigational if there is inadequate medical literature or clinical experience to support its use in a patient's condition even if it has been shown to be safe and effective in treating other conditions. BCBSM says that it appears that ABA is safe, but doubts remain as to the effectiveness of the treatment.

Therefore, BCBSM believes that the Petitioner's ABA therapy should not be a covered benefit.

Commissioner's Review

The question of whether the Petitioner's ABA therapy is investigational or experimental for treatment of the Petitioner's condition was presented to an IRO for analysis as required by section 11(6) of PRIRA. The IRO physician reviewer who conducted the analysis is in active clinical practice and is certified by the American Board of Pediatrics and the American Board of Internal Medicine.

The reviewer noted that autism is a complex disorder with limited therapeutic options. The reviewer stated that the Petitioner was evaluated by the appropriate specialists and prescribed appropriate therapy as mandated by multiple reputable health administrative agencies. The reviewer concluded that "the ABA treatment in question is an acceptable treatment approach and is medically necessary."

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner; in a decision to uphold or reverse an adverse determination, the Commissioner must cite "the principal reason or reasons why the Commissioner did not follow the assigned independent review organization's

recommendation.” MCL 550.1911(16)(b). The IRO reviewer’s analysis is based on extensive expertise and professional judgment and the Commissioner can discern no reason why the recommendation should be rejected in the present case. Therefore, the Commissioner accepts the IRO reviewer’s conclusion and finds that ABA therapy for the Petitioner is an acceptable treatment and should be a covered benefit.

**V
ORDER**

Respondent BCBSM’s April 11, 2008, final adverse determination is reversed. BCBSM shall authorize and cover the Petitioner’s ABA therapy provided between September 4, 2007 and November 21, 2007. Coverage is to be provided within 60 days from the date of this Order with proof of compliance provided to the Commissioner within seven days of compliance.

Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.